

**Limited Source Justification
and
Justification for Other than Full and Open Competition**

"Source Selection Information – see FAR 2.101 and 3.104"

1. Identification of the agency and contracting activity.

- **Federal agency and contracting activity:** HHS – Centers for Medicare & Medicaid Services
- **Sponsoring organization:** Office of Information Services / Consumer Information & Insurance Systems Group
- **Project Officer information**
 - **Project Officer :** Paul Weiss
 - **Mailing address:** 7500 Security Blvd, Baltimore, MD 21244
 - **E-mail address:** paul.weiss@cms.hhs.gov
 - **Telephone number:** (410) 786-6089

2. Nature and/or description of the action being approved.

This justification supports the award of two out of scope modifications which both included the addition of open market items to a GSA Schedule 70 task order with Terremark Federal Group, Inc. The out of scope services can be justified with a Limited Source Justification (LSJ) in accordance with FAR Part 8 because CMS is procuring these services from a GSA Schedule 70 contract. The open market items require a Justification for Other than Full and Open Competition (JOFOC) since the items are not included on a GSA Schedule contract, they are treated as brand-name specific requiring justification in accordance with FAR Part 6.3.

For administrative convenience, CMS is consolidating the information required in the LSJ and JOFOC into one combined document that fully addresses the requirements of each justification.

CMS executed urgently required modifications 00011 and 00012 in rapid succession to add technology infrastructure and service requirements not contemplated at time of award. The additional services are required to provide sufficient cloud computing to support the operations of the Federally Facilitated Marketplace (FFM) and Data Services Hub (DSH).

These two projects support the Affordable Care Act (ACA) health care reform implementations.

- **Acquisition purpose and objectives.**

The goal of this effort is to obtain the technology infrastructure and service requirements to provide the cloud computing environment for the FFM and DSH. The FFM is the Federal health care exchange. The DSH is the information conduit to be used to share information among all state exchanges, stakeholders and Federal partner agencies.

One of the key provisions of the ACA is the implementation of Insurance Exchanges. An Exchange is an organized marketplace to help consumers buy health insurance in a way that permits easy comparison of available plan options based on price, benefits, services and quality.

Each Exchange requires a state-of-the-art, Federal Information Security Management Act (FISMA) compliant cloud-based infrastructure that can dynamically scale as needed, and a secure, cloud-based Application Lifecycle Management (ALM) that functions as a component of a Platform as-a-Service (PaaS).

- **Project background.**

The Program Support Center (PSC) provides procurement services for Federal customers. The Center for Consumer Information and Insurance Oversight (CCIIO) sought the assistance of the PSC in 2011 to award a cloud services contract for CCIIO. The PSC competed the effort under GSA Schedule 70 in accordance with FAR 8.405-2 Ordering Procedures for Services Requiring a Statement of Work and awarded this task order to Terremark.

The PSC transferred the order to CMS in 2011. CMS then modified the order several times to add services. The Contracting Officer determined that the modifications were within the scope of the order.

The contracting officer considers the work contained in the subject modifications to be out of scope and requiring this justification. Both parties could not have contemplated that this additional capacity was required. This additional capacity was not included in the original task order, and therefore the addition of the work is justified and approved with this Limited Sources Justification.

CMS recognized that some of the required services and products were not included on the GSA schedule. Therefore CMS

determined that it would add the open market items to the task order in accordance with the process described at FAR 8.402 (f). This justification is necessary in order to satisfy FAR Part 6 requirements for these open market items now that the price list is finalized and the open market services are known.

The values of the modifications are as follows:

- Modification 00011: \$9,370,315.78
- Modification 00012: \$4,533,817.55

As a result the total value of the task order is increased by \$13,904,133.33 from \$46,044,464.58 to \$59,948,597.91.

The order contains Service Level Agreements and credits that can be applied when the contractor does not meet the SLAs. There was an outage in October 2013. CMS and the contractor calculated the applicable service credit due as a result and CMS applied \$1,337,478.46 to the increases by reducing an existing CLIN and creating new CLINS for the additional services acquired by these modifications. The net increase to the contract value is \$13,904,133.33. The total value of the services described below is \$15,241,611.79. The difference between the value of the added services and the total price increase reflects the application of the service credit.

3. Description of the supplies or services required to meet the agency's needs (including the estimated value).

- **Project title:** Cloud Computing Services
- **Project description**

CMS required additional cloud computing capacity over and above that contemplated at time of award. CMS added additional services from Terremark's GSA schedule contract, specifically: software to support the cloud environment, firewall upgrades, virtual machine compute and storage, and professional services. The value of the services added from Terremark's GSA schedule contract was \$8,976,413.45.

CMS also required certain open market services that are not available on GSA schedule. This justification also covers the acquisition of services that are brand-name or peculiar to one manufacturer. The use of such descriptions is essential to the Government's requirements thereby precluding consideration of products manufactured by other companies. The following open

market items were added by modifications 00011 and 00012 as required to improve performance of the Marketplace:

Service/Product Description	Total Cost (cost x qty x mos)
LMVM expansion per 40 GHz/160 GB	\$ 150,400.00
LMVM expansion per 40 GHz/160 GB	\$ 665,600.00
Cloud Storage Infrastructure Service: Netapp Filer Head 6290 Series upgrade, high availability design service	\$ 1,209,846.00
Cloud Storage Infrastructure Service: Netapp Filer Head 6290 Series upgrade, high availability design service	\$ 670,016.00
Cloud Firewall Infrastructure Service: Cisco FW 5585-s60, high availability design service	\$ 241,150.00
Cloud Firewall Infrastructure Service: Cisco FW 5585-s60, high availability design service	\$ 160,704.00
LMVM expansion per 40 GHz/160 GB	\$ 131,600.00
LMVM expansion per 40 GHz/160 GB	\$ 582,400.00
LMVM expansion per 40 GHz/160 GB	\$ 998,400.00
Dedicated SIEM/Log Aggregation (each)	\$ 58,584.00
Network Tap: XFP	\$ 1,595.38
Network Tap: XFP	\$ 1,156.00
Network Tap: VSS Monitoring	\$ 73,296.00
Network Tap: VSS Monitoring	\$ 53,108.00
Network Behavior Monitoring: up to 125Gbps Netflow, Arbor	\$ 57,669.04
Network Behavior Monitoring: up to 125Gbps Netflow, Arbor	\$ 41,784.00
Dedicated SIEM/Log Aggregation (each)	\$ 3,025.00
Dedicated SIEM/Log Aggregation (each)	\$ 35,443.32
Platform: 208V (per effective 01U)	\$ 43,680.00
Professional Services - Senior Information Architect - Per Hour - Business Hours *Mark Logic*	\$ 379,836.60
Professional Services - Senior Information Architect (After Hours) - Per Hour *Mark Logic*	\$ 356,642.00
Professional Services - Senior Information Architect - Per Hour - Business Hours *Mark Logic*	\$ 172,653.00
Professional Services - Senior Information Architect (After Hours) - Per Hour *Mark Logic*	\$ 162,110.00
NICII -Port Bare Cage SFP+ 10GbE PCIe	\$ 5,954.00
SFP+ for X1117A, Optical 10GbE, R6	\$ 3,770.00
10GBASE-SR SFP MOD	\$ 4,776.00
	\$ 6,265,198.34

- **Requirement type.**

- ☐ Support services (non-research & development)
- ☐ Supplies/equipment
- ☒ Information technology (IT)
- ☐ Other (specify): _____

- **Type of action.**

- ☐ New requirement
- ☐ Follow-on
- ☒ Other (specify): ____ Modification to add out of scope services and open market items

- **Proposed contract/order type.**

- ☒ Firm-fixed-price
- ☐ Time and materials
- ☐ Indefinite delivery (specify whether indefinite quantity, definite quantity, or requirements): _____
- ☐ Other (specify): _____

- **Acquisition identification number:**

Contract: GS-35F-0073U

Order: HHSP-233-2011-00177G

- **Total estimated dollar value and performance/delivery period.**

The value of the two modifications is \$13.9M. The period of performance of the order will remain unchanged.

4. Identification of the justification rationale [see 8.405-6(a) and (b)] and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

a. Acquisition authority.

This acquisition is conducted under the authority of the Multiple Award Schedule Program. Consideration of schedule contractors will be restricted to fewer than the number required by Federal Acquisition Regulation (FAR) 8.405-6(a)(1)(i)(A) (i.e., fewer than three FSS contractors). There is an urgent and compelling need for the services and following the ordering procedures will result in unacceptable delays.

Additionally, CMS conducted portions of the modifications using the authority of 41 United States Code (U.S.C.) 253(c)(1) as set forth in Federal Acquisition Regulation (FAR) 6.302-1- Only one responsible source and no other supplies of services will satisfy agency requirements.

b. Demonstration of the proposed contractor(s) unique qualifications to provide the required supply or service.

- **Name and address of the proposed contractor(s).**

Terremark Federal Group, Inc., One Biscayne Tower, 2 S. Biscayne Boulevard, Suite 2800, Miami, FL 33131-1800

- **Nature of the acquisition and proposed contractor(s) unique qualifications.**

CMS could not have anticipated the need to add these additional services. Not all of the required services are contained within Terremark's GSA contract, therefore requiring CMS to acquire these services as open market items. Previous resource estimates gave CMS reasonable assurance that the capacity procured through this order was sufficient for the expected demands. CMS learned

through system performance after the October 1st Go Live for Open Enrollment that the Terremark cloud would not be able to handle expected traffic to the website. The modifications were needed to meet the need to improve the user experience by November 30, 2013.

There is insufficient time to competitively procure the needed services. A procurement action like this would normally take about four to six weeks to procure. CMS needed to improve the system performance by November 30, 2013. CMS believed if the additional services were not added urgently, the Exchanges would not function as designed and citizens would continue to have issues using the Marketplace.

This justification also approves the addition of open market items. The task order is a General Services Administration (GSA) Schedule 70 Information Technology Services Multiple Award Schedule (MAS) task order. The GSA competes and awards MAS contracts. Therefore all MAS orders placed in accordance with the procedures described at Federal Acquisition Regulation (FAR) 8.4 are considered to have been issued under full and open competition. GSA has also determined that the pricing for items and fixed price services on the MAS is fair and reasonable. Therefore, when ordering fixed price services that are included in the Schedule 70 contract, Contracting Officers do not need to seek competition outside of the Schedule 70 contracts nor make a separate determination of price reasonableness.

FAR 8.4 also provides that ordering agencies may add items that are not included on the MAS. These items are defined as open market items. FAR 8.4 permits ordering agencies to add open market items if the agency follows pertinent acquisition regulations, including the requirement to obtain full and open competition described in FAR 6. In accordance with FAR 6.3, this document provides the required documentation and approval of the non-competitive acquisition from Terremark of the brand-name open market items described herein.

5. Determination by the ordering activity Contracting Officer that the order represents the best value consistent with FAR 8.404(d).

The Contracting Officer performed price analysis on the GSA schedule pricing proposed by the contractor. The Contracting Officer requested and obtained additional discounts to the already-negotiated GSA pricing. The

Contracting Officer requested the contractor to provide detailed pricing information from the GSA schedule price list illustrating how the contractor derives its proposed pricing for the cloud services. For the labor portions of the required services, the Contracting Officer required the contractor to provide the estimated hours and GSA schedule labor categories proposed to perform the services. The Contracting Officer performed price analysis of these proposed rates and obtained a technical analysis from the CMS program office to determine if the quantities and types of labor were realistic to perform the required services. Based on the analysis described above, the Contracting Officer determined the total proposed price was fair and reasonable.

In determining the price to be fair and reasonable for the open market items, the Contracting Officer reviewed the commercial price list from the offeror in accordance with FAR 15.402. Consistent with FAR 15.404-1(b)(2)(iv), the Contracting Officer has obtained established catalog prices to determine price reasonableness. In accordance with FAR 15.403-1(b)(3) certified cost/pricing data is not required since the items being acquired are considered commercial items as defined in FAR 2.101. The Contracting Officer compared the commercial price list, the discounted prices and the proposed prices to determine price reasonableness.

6. Description of the market research conducted among schedule holders and the results, or a statement of the reasons market research was not conducted.

As discussed above, there was insufficient time to follow normal competitive procedures. However, CMS believes it is most reasonable to have the current contractor perform this work as they are in the best position to add the required capacity as quickly as possible to their cloud environment. In regards to the open market items, market research confirmed the open market items are not available on schedule. CMS believes the items are critically needed to provide the required cloud services.

7. Any other facts supporting the justification.

The Health Care Reform efforts this task order supports affect a significant portion of the country's citizens. CMS is not in a position to take the time to compete the added capacity requirements and successfully implement the exchange program as mandated by law.

CMS should maintain the integrity of Terremark's Federal agency-only infrastructure. Terremark offers a readily available private Federal Cloud that is hosted in a datacenter purposed specifically and exclusively to house Federal IT Infrastructure (Tier III + datacenter in Culpeper, VA - 60 miles+ from DC). It is not feasible for CMS to bring in Open Market

services from another contractor to the Terremark infrastructure without negatively impacting IT security awareness/readiness.

As Terremark's solution to CMS is built on leveraging best of breed technology from HP, IBM, VMware and Cisco to achieve unmatched flexibility and control, Terremark is better suited to provide the Open Market services to CMS and ensuring compatibility and support for transition out activities.

Obtaining the open market services from another source would negatively impact on-going support and problem resolution as additional time will be required to troubleshoot.


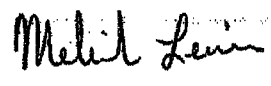
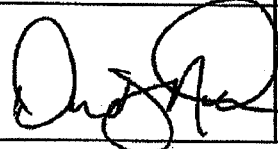
8. Statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

a. Removal of barriers to competition. N/A

b. Listing of sources, if any, that expressed an interest, in writing, in the acquisition. N/A

9. Program office certification

This is to certify that the portions of this justification that have been developed by the undersigned program office personnel, including supporting information and/or data verifying the Government's minimum needs or requirements, or other rationale for limited sources, are accurate and complete.


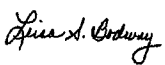

Office	Name	Signature	Date
Contracting Officer's Representative	Paul Weiss		1/28/14
Contracting Officer's Representative's Immediate Supervisor	Angela Hitchcock Melinda Lewis for		1/28/14
Head of the Sponsoring Program Office	David Nelson		1/28/14

10. Contracting Officer Certification

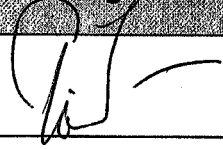
This is to certify that the justification for the proposed acquisition has been reviewed and that to the best of my knowledge and belief the information and/or data provided to support the rationale and recommendation for approval is accurate and complete.

Official	Name & Title	Signature	Date
Contracting Officer	Andrew Mummert	Andy Mummert <small>Digitally signed by Andy Mummert DN: cn=Andy Mummert, o=OAGM, ou=CMS, email=andrew.mummert@cms.hhs.gov, c=US Date: 2014.01.29 16:27:17 -05'00'</small>	

11. Chief of the Contracting Office and Head of the Contracting Activity signature(s):

Official	Name & Title	Signature	Date
Cognizant Division Director	Andrew Mummert, Director, Division of Information Systems Contracts	Andy Mummert <small>Digitally signed by Andy Mummert DN: cn=Andy Mummert, o=OAGM, ou=CMS, email=andrew.mummert@cms.hhs.gov, c=US Date: 2014.01.29 16:27:17 -05'00'</small>	
Cognizant Group Director	Don Knode, Director, Information Technology Contracts Group	 Date: 2014.01.29 19:39:06 -05'00'	
Director, Division of Policy Workforce and Systems	Leisa Bodway, Director, Division of Quality Assurance and Technology	 <small>Digitally signed by leisa.bodway2@cms.hhs.gov DN: cn=leisa.bodway2@cms.hhs.gov, o=OAGM, ou=CMS, email=leisa.bodway2@cms.hhs.gov, c=US Date: 2014.02.05 14:29:45 -05'00'</small>	
Head of the Contracting Activity	Daniel F. Kane, Director, Office of Acquisition and Grants Management	 2/14/14	

12. Competition Advocate signature:

Official	Name & Title	Signature	Date
Competition Advocate	Tim Love, Chief Operating Officer		2/19/14